Supreme Court, U.S.
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No. _____

In the
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1996

Blueprint Engines, Inc., *Petitioner-Defendant*,
v.
Jadair Incorporated, *Plaintiff-Respondent*, and
United States Fire Insurance Company, *Defendant-Respondent*,
Mesirow Insurance Services, Inc., West Bend Air, Inc., Stanley Aircraft & Engine Service, Inc., Employers Reinsurance Corporation, *Defendants*.

On Petition for a Writ of Certiorari to the Supreme Court of the State of Wisconsin

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PETITION FOR WRIT OF CERTIORARI

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35 pp

QUESTIONS PRESENTED

Whether the Due Process guarantee of the Fourteenth amendment of the United States Constitution bars enforcement of Wisconsin statutory provisions and/or common law rules that refuse to open their appellate courts' doors, to resolve on its merits, the timely and otherwise proper appeal by an Illinois corporation from an adverse summary judgment entered at the trial court level, merely because its one page Notice of Appeal had been signed by an officer-owner-director of the Illinois corporation, rather than by an attorney, without even inquiring whether or *not* that corporation had sufficient funds available to be able to hire an attorney to sign such a Notice of Appeal within the requisite 45 days time period to appeal, and even though a Wisconsin attorney specially appeared on its behalf about a week after the motion to dismiss the appeal had been filed, but after the aforesaid 45 days had elapsed?

Whether the aforesaid closing of "access" to the Wisconsin appellate court system was in violation of the Equal Protection of the Laws guarantee of the Fourteenth Amendment because all human beings (natural persons) have an *absolute* right to have his or her Notice of Appeal given full legal effect, even though *not* signed by an attorney?

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Mesirow Insurance Services, Inc., West Bend Air, Inc., Stanley Aircraft & Engine Service, Inc., Employers Reinsurance Corporation, *Defendants*.

PETITION FOR WRIT OF CERTIORARI

Petitioner Blueprint Engines, Inc., by its attorney, respectfully petitions this Court to issue a writ of certiorari to review the Decision of the Wisconsin Supreme Court in this case. (See App., tab A)

OPINIONS BELOW

The Decision of the Wisconsin Supreme Court eventually will be reported in _____ Wis.2d _____ and in _____ N.W.2d _____, but to date has not been.

The opinion of Court of Appeals II (see tab B) will not be reported.

JURISDICTION

Jurisdiction over this case is provided by 28 U.S.C. 1257 and Rule 10(b)(c), Rules of the Supreme Court of the United States. The Decision of the Wisconsin Supreme Court to be reviewed was filed on April 29, 1997.

UNITED STATES CONSTITUTIONAL PROVISIONS INVOLVED

Article XIV of the Amendments to the United States Constitution provides that "(n)o State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT

A. Proceedings at the Circuit (Trial) Court Level

This Wisconsin case initially involved claims by plaintiff Jadair Incorporated ("Jadair") against the

Illinois corporation that overhauled one of its airplane's engines, defendant Blueprint Engines, Inc. ("Blueprint"); Blueprint's insurance company, defendant-respondent United States Fire Insurance Company ("U.S. Fire Ins."); the insurance agency which arranged for Blueprint's insurance coverage, defendant Mesirow Insurance Services, Inc. ("Mesirow"), and its insurance company; and two other Wisconsin companies that had worked on the installation of the overhauled engine in the airplane. Blueprint was initially represented by two Illinois attorneys in the Wisconsin trial court, but they both withdrew for financial reasons on December 5, 1994. Thereafter, Blueprint participated in this lawsuit via its officer-director-stockholder, Ed Rachanski, who was not an attorney--but without any motions being made by any of the other parties in this civil action to bar this representation upon the ground that he was illegally practicing law in Wisconsin upon behalf of a foreign corporation.

On May 25, 1995 the trial court granted summary judgment to U.S. Fire Ins. dismissing all of Jadair's claims against it, as well as all of the cross claims by the other co-defendants against it, including those of Blueprint. Summary judgment was entered on July 18, 1995. There was only 45 days thereafter

for Blueprint to appeal therefrom.

B. Appellate Proceedings

Jadair filed its Notice of Appeal on July 15, 1995. Blueprint filed its Notice of Appeal on August 21, 1995. The former was signed by its regular attorney, Ross R. Kinney, then a partner at Quarles & Brady. The latter was signed by Ed Rachanski, *pro se*. (See App., tab C) Wisconsin had an absolute 45 day time limit for filing Notices of Appeal after the judgment was entered, where, as here, notice of its entry was given. Notices of Appeal filed thereafter are, under Wisconsin law, fatally late. On September 18, 1995, well after this 45 day time period had elapsed, U.S. Fire Ins. moved Court of Appeals II to dismiss both the Jadair appeal and the Blueprint appeal. This motion, insofar as it was to dismiss Jadair's appeal, was denied by Court of Appeals II. However, it dismissed Blueprint's appeal--not upon the ground that it was in an improper form or untimely--but solely because that one page sheet of paper had been signed by Ed Rachanski, rather than by an attorney. (See App., tab B) Seven days after the filing of the motion to dismiss Blueprint's appeal was interposed, attorney Ross R. Kinney appeared

specially in the appellate proceedings only, upon behalf of Blueprint. As to the merits of the summary judgment adjudications, the interests of Jadair and Blueprint were, and are, substantially identical and, accordingly, there was no fatal conflict-of-interest.

Blueprint and Jadair petitioned the Wisconsin Supreme Court to accept an appeal from Court of Appeals II's adverse decision dismissing Blueprint's appeal and this was accepted. After briefing and oral argument, the Wisconsin Supreme Court unanimously affirmed the dismissal of Blueprint's appeal on April 29, 1997--solely upon the ground that the one page Notice of Appeal had been signed by Ed Rachanski who was not, and is not, a lawyer. (See App., tab A) Extensive constitutional arguments had been advanced by Jadair and Blueprint to the Wisconsin Supreme Court in their initial and reply briefs. But the Wisconsin Supreme Court's perfunctory advertances to the Equal Protection of the Laws and Due Process constitutional issues, did *not* come to grips with any of the key considerations and did *not* attempt to discuss or deal with the extensive supportive case law relied upon by Jadair and Blueprint. Nor did it engage in the requisite constitution analysis mandated by this Court's decisions dealing with Due Process and Equal Protection issues.

(See App., tab A, pages 18a-19a)

Accordingly, 28 U.S.C. 2403(b) may be applicable.

REASONS FOR GRANTING THE PETITION

Introduction

The Wisconsin Supreme Court's Decision does *not* even advert to the constitutional consequences, if any, of a small family owned corporation's financial inability to retain and pay for an attorney within the 45 day appeal period--even though lack of money is certainly a critical factor that looms ever larger in civil actions during modern times in this country. Given the ever rising number of legal malpractice claims against attorneys, as well as the statutory provisions in the judicial systems of the states, as well as the Federal system, imposing "frivolousness" penalties, it can be very difficult to retain needed lawyers in civil actions. These factors can certainly be powerful deterrents to attorneys haphazardly agreeing to represent financially strapped family corporations that cannot afford to pay much money, if any, for the representation.

Yet the Wisconsin Supreme Court's controlling analysis, mirroring Court of Appeals II's *per se* rule, has *no* means by

which the appellate courts can even consider such critical factual considerations or determine whether they exist--even if the practical effect of the *per se* "must be signed by attorney" rule is to bar *access* to the appellate court system. There is simply a *per se* statutory and/or common law bar to any and all corporations obtaining "access" to the appellate system if their Notices of Appeal are *not* signed by an attorney and filed within the requisite 45 days window.

It is now time for this Court to evaluate and resolve--in the light of modern day realities-circumstances--the issues whether Due Process and/or Equal Protection of the Laws protect small family owned corporations from being, in effect, denied "access" to states' appellate court systems in civil actions--as they attempt to protect their Property (e.g. accumulated by the family over one or more generations) in the midst of expensive and complex *civil* lawsuits. When such small corporations simply do *not* have sufficient financial resources available to pay an attorney to represent it in an appeal by signing a Notice of Appeal within a very short time period, the practical effect of requiring an attorney to sign that document, is to bar "access" for want of money. This financial problem was exacerbated in this

case by the relatively short 45 day time period which Blueprint found itself in the midst of and without the benefit of any attorney's advice. It had to get and file a sheet of paper labeled "Notice of Appeal"--in order to avoid a statute of limitation type bar--within 45 days from the date of the July 18, 1995 summary judgment).

Extensive legal research discloses no published decisions in any court in this country that have grappled with these precise Due Process and Equal Protection constitutional issues involving "access" to appellate courts in the context of small corporations experiencing such severe financial constraints. In particular, legal research disclosed no judicial decisions resolving such issues in the light of the more recent decisions of this Court that have dealt with analogous constitutional issues involving the right to counsel (attorney), and analyzed and applied the Due Process and/or Equal Protection of the Laws guarantees in civil actions.

The bars in many states in this country, including Wisconsin, have been for years grappling with the question of how desperately needed lawyering services can somehow be provided to the lower middle class persons and businesses in this country, as they seek justice and righteousness in our court systems--but

simply cannot afford to pay for attorneys' service at their going rates. The problem is particularly acute where first class trial representation is needed in civil actions because important constitutionally protected Property rights-interests are at stake. Adverse results can be financially devastating to the persons and/or businesses at risk--including those which are *incorporated*--if they lose.

I. The Wisconsin Supreme Court's Absolute Fatally "Defective" Statutory-Common Law *Per Se* Rule Requiring all Corporations' Notices of Appeals to be Signed by an Attorney, is in Violation of the Due Process and/or the Equal Protection Guarantees of the Fourteenth Amendment to the United States Constitution

It has long been well-settled that the Fourteen Amendment to the United States Constitution, via its Due Process and Equal Protection of the Law guarantees, is applicable to, and imposes limits upon, state court systems' deprivations of litigants' "property" interests. *Cf. e.g.*, Craig v. Carson, 449 F. Supp. 385, 389-91, 395 (M.D. Flo. 1978) (must be "...fundamental

safeguards...real and present"; held Due Process mandates, *inter alia*, that "...there must be some legitimate governmental or public reason asserted for depriving an individual of his liberty or *property*." Craig at 390. Due Process guarantees procedurally that state court systems cannot infringe upon litigants' "property" interests via rules that are "arbitrary, capricious or without rational basis." *See e.g.*, Harrah Independent School District v. Martin, 440 U.S. 194, 99 S.Ct. 1062 (1979); Kaufman v. Board of Trustees, Community College, 552 F. Supp. 1143, 1153-6 (W.D. Ill. 1982) (held violated Due Process and Equal Protection); Pyeatte v. Bd. of Regents of University of Oklahoma, 102 F. Supp. 407, 411-3 (W.D. Okla. 1951) aff'd. per cur. 342 U.S. 936, ___ S.Ct. ___ (1952). So viewed, the Wisconsin Supreme Court's absolute rule that all corporations' one page Notices of Appeal must be signed by an attorney or adjudged fatally defective just because the litigating party is a corporation--even though that same sheet of paper would be legally okay if that party had been a human being--cannot pass muster.

The Due Process guarantee as applied to state courts' procedures mandates a "balancing" of three factors (1) the particular kind of private liberty or

property interest at stake, (2) the *risk* of a *wrongful* or *erroneous* deprivation of that interest, and (3) the public or governmental interest involved. *See e.g.* Craig, 449 F. Supp. at 391. The bottom line Due Process guarantee is that the procedural "safeguards" imposed by the states in their courts must be "meaningful and reasonable." *See e.g.*, Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 313-4, 70 S.Ct. 652 (1950); Craig, 449 F. Supp. at 391. Yet the Wisconsin Supreme Court's *per se* rule has no such balancing and, moreover, its April, 1997 decision embracing that *per se* rule, did *not* engage in this analysis. Moreover, what is the overwhelming "public or governmental interest involved" which justifies closing the appellate doors to all corporations merely because the "legally magic" sheet of paper, the Notice of Appeal, was not *signed* by an attorney--even if a Wisconsin attorney would be representing the corporation thereafter as to all key functions (e.g. brief writing)?

The essence of the Equal Protection of the Law guarantee is that similarly situated "persons" *must* be treated the same unless "meaningful, socially relevant differences" justify the differences in treatment--i.e., equate with the "just distribution of benefits and burdens in society." The

classifications must be based upon "distinguishing characteristics which are relevant to the states' legitimate interests." Cook v. Babbitt, 819 F. Supp. 1, 11 (D.D.C. 1993). So judged, the Wisconsin Supreme Court's *per se* rule's line between *all* corporate "persons" and *all* human beings (natural "persons"), cannot pass muster. The substantive Due Process guarantee is virtually co-extensive with the Equal Protection of the Laws guarantee. *See e.g.*, Harrah, 440 U.S. at 194; Kaufman, 552 F. Supp. at 1153; Pyeatte, 102 F. Supp. at 415-6 (group-class subjected to the requirements cannot be arbitrarily selected and defined).

As early as Covington v. Sandford, 164 U.S. 578, 17 S.Ct.198 (1896) it was time to declare that "[i]t is now settled that *corporations* are *persons* within the meaning of the constitutional provisions forbidding the deprivation of property without due process of law, or, as well, a denial of the equal protection of the laws." Since Blueprint, as a "corporation," is nonetheless a "person," it was protected by the Due Process and Equal Protection of the Law guarantees. *See* also *e.g.*, Trapper Brown Constr. Co., Inc. v. Electromech, 358 F. Supp. 105, 106-7 (D.N.H. 1973); State v. Sowder, 826 S.W.2d 294, 926-8 (Tenn. Cr. App. 1991) ("...(a)ll forms of *property*..." are

entitled to such protection). Blueprint's corporate assets were, and are, such "property." See also e.g. First Nat. Bk. v. Bellotti, 435 U.S. 765, 780, 985 S.Ct. 1407 (1978) ("(i)t has been settled for almost a centry that corporations are persons within the meaning of the Fourteenth Amendement.").

Due Process guarantees *reasonable* access to all court systems. *See e.g.*, Hooks v. Wainright, 352 F. Supp. 163 (M.D. Fla. 1972), aff'd. 529 F.2d 161, (10 Cir. 1976); Silver v. Cormior, 529 F.2d 161 (10 Cir. 1976); Boling v. National Zinc Co., 435 F. Supp. 18, 20 (N.D. Okla. 1976). This encompasses Wisconsin's appellate court system! The constitutional impact and significance of financial requirements, which litigants could *not* afford to meet, were initially recognized in the criminal litigation arena under the "liberty" guarantee. However, these very same concerns are also applicable in the civil litigation arena via the constitutional "property" guarantees. The genesis decision which broke the ground was Griffin v. Illinois, 351 U.S. 12, 13-4, 76 S.Ct. 585 (1956) where it was held in a criminal case that the state rule requiring appellants to pay for trial transcripts violated the Equal Protection and Due Process guarantees by "thereby shut[ting] off [the] means of appellant review for

indigent defendants." But most of our country's citizens are *not* at risk in criminal cases; the more important concerns for the average hard working citizens who are the backbone of this country, is whether they will have enough available money to pay for attorneys fees when they engage in civil actions as they occur! Attorneys fees are much greater than fees for trial transcripts.

In Tucker v. City of Montgomery, 410 F. Supp. 494, 502 (M.D. Ala. 1976) it was held that the requirement of filing surety bonds in appeals from municipal "quasi-criminal" convictions violated the Equal Protection guarantee *as applied to* "indigents" because the erection of "financial barriers restricting the availability of appellate review for indigent individual defendants has no place in our heritage of equal justice under law." Amen! See also, *e.g.*, Burns v. Ohio, 360 U.S. 252, 257, 79 S.Ct. 1164 (1959) (appellant unable to pay docketing and filing fees for appeal from felony conviction, citing Griffin). Yet "access" to appellate courts is even more surely denied in civil actions by requiring *all* corporations to hire an attorney to sign the Notice of Appeal within 45 days, when "applied to" corporations that do *not* have the money available to do so!

In Boddie v. State of Connecticut,

401 U.S. 371, 372, 375, 91 S.Ct. 780 (1971) it was held that state litigation procedures requiring "payment of court fees and costs of service of process, that *restrict* their *access* to the courts in their effort to bring an action for divorce"--i.e. in civil, *not* criminal cases--just because of their "inability" to afford to pay them (because of indigency), were also unconstitutional. This same reasoning is also applicable to natural persons and to corporate persons that simply cannot afford to hire an attorney to represent them in given civil actions and accordingly, must choose to proceed *pro se*. Blueprint's cross claim legal rights against its insurance company, U.S. Fire Ins., are "property rights" protected by the Due Process and Equal Protection of the Laws guarantees--particularly since Jadair's claims against Blueprint are still legally viable.

Boddie concluded, citing Griffin:

> Just as a generally valid notice procedure may *fail to satisfy due process* because of the *circumstances* of the defendant, so too a *cost requirement*, valid on its face, may *offend due process* because it operates to *foreclose* a particular party's *opportunity*

> *to be heard.*
>
> ***
>
> In our opinion, *none* of these considerations is sufficient to *override* the *interest* of these plaintiff-appellants in having *access* to the *only avenue open* for dissolving their allegedly untenable marriages. Not only is there *no* necessary connection between a *litigant's assets* and the seriousness of his motives in bringing suit, but it is here beyond present dispute that appellants bring these actions in *good faith*. (401 U.S. at 381-2; emphasis added)

The Wisconsin Supreme Court's *per se* rule refuses to take any of these constitutionally key factual matters into account; it simply closes Wisconsin's appellate doors to Blueprint and to all other *pro se* corporations--regardless of their financial plights--just because the person signing the one page Notice of Appeal is *not* an attorney.

Justices Douglas and Brennan concurring in Boddie relied upon the Equal Protection guarantee, citing, *inter alia*, Griffin and Burns, (401 U.S. at

384-90):

> A state may *not* make its judicial processes available to some but *deny* them to others *simply because they cannot pay.* (401 U.S. at 390; emphasis added)

Yet U.S. Fire Ins. presented *no* evidence on this critical factual consideration in support of its motion to dismiss the Blueprint appeal. Moreover, it conceded during oral argument before the Wisconsin Supreme Court that it had sustained no "prejudice" because Ed Rachanski had signed Blueprint's Notice of Appeal *pro se*, rather than having an attorney sign it. So what is the overbalancing legitimate "public" interest which justifies closing "access" to Wisconsin's appellate court system to Blueprint's appeal?

Five years earlier, the Wisconsin Supreme Court in Piper v. Popp, 167 Wis. 2d 633, 637-9, 482 N.W.2d 353, 355-7 (1992) had grappled with some of these very same constitutional considerations in a civil lawsuit involving an "indigent" natural person, in the context of Due Process. The constitutional guarantees which it embraced in that decision, are at odds with its 1997 *per se* rule in this case, which does *not* even

consider the financial capabilities of the corporation *vis a vis* paying for an attorney in a particular lawsuit to sign the Notice of Appeal. The issue in Piper was whether an "indigent" defendant in a civil (tort) action "has a constitutional right to have the state appoint and pay for an attorney to represent him." The court engaged in a "weighing the elements in due process" analysis, rather than merely announcing a *per se* rule. (167 Wis.2d at 638) Yet in this case, it did not do so!

In this case, the Wisconsin Supreme Court's *per se* rule barred Blueprint from appearing *pro se* in this case--even for the limited and isolated purpose of signing and filing Blueprint's one page Notice of Appeal so as to effectuate its appeal within the short jurisdictional time period (i.e. 45 days). But the Wisconsin Supreme Court held in Piper:

> To answer this question, we begin with the *axiom* that before the state may deprive an individual of life, liberty *or property*, the state must accord the individual in a *meaningful opportunity* to be heard. In other words, *litigants must be given their day in court. Access* to the courts is an

> *essential ingredient* of the constitutional *guarantee of due process*. Whatever the precise status of the *right of access* to the courts, due process is satisfied "if the procedures provide an opportunity to be heard at a meaningful time and in a meaningful manner.
> (482 N.W.2d at 358; emphasis added)

The Wisconsin Supreme Court's *per se* rule is incompatible with this constitutional Due Process "property" analysis, as well as with other states' judicial decisions and with some Federal lower court decisions. Accordingly, this Court should clarify this important constitutional area!

"The right to file an *appeal* is a *property* interest which may *not* be revoked absent due process of law." Kertes Ent., Inc. v. Orange Village, 593 N.E.2d 306, 307-8 (Ohio App. 1990) (emphasized "no prejudice" to opposing party). See also e.g. Atkinson v. Grummon Ohio Corp., 523 N.E.2d 851 (Ohio 1988). The right to appeal is also protected by the Equal Protection guarantee. Lindsey v. Normet, 405 U.S. 56, 78-80, 92 S.Ct. 862 (1972) held, citing, *inter alia*, Griffin, that the state's double bond requirement--which is nowise as expensive as hiring an attorney

to sign a Notice of Appeal violated the Equal Protection guarantee because "arbitrary" and "irrational":

> ...When an *appeal is afforded*, however, it *cannot be granted to some* litigants and capriciously or arbitrarily *denied* to others without violating the Equal Protection Clause.
>
> ...The claim that the double-bond requirement operates to screen out frivolous appeals is *unpersuasive*, for it *not only bars* nonfrivolous appeals by those who are *unable* to post the bond but also allows meritless appeals by others who can afford the bond.
> (emphasis added)

Likewise, creating dividing lines between *pro se* appellants in an appellate system upon the basis of whether they are corporate "persons" or human beings (natural "persons"), and between corporations that can afford to hire an attorney to sign their Notices of Appeal and those that cannot, are subject to the same legal condemnation. It becomes even more arbitrary when the issues determining "access" to the appellate

system revolve around *who* signs a one sheet piece of paper labeled Notice of Appeal, whose *sole practical function* is to give "notice" to the winning party that the losing party is appealing that decision! It is hardly necessary to have an attorney sign that document; it is *not* a complex legal endeavor like an appellate brief.

In O'Day v. George Arakelian Farms, Inc., 536 F.2d 856, 585-60 (9 Cir. 1976) it was held that the double bond requirement violated the Equal Protection guarantee because "...not reasonably or rationally related to a *legitimate* governmental purpose and [it] constitutes an effective bar to appeal.":

> Lindsey also makes clear, however, that the requirement imposed must be rationally related to securing the *risk involved*. Legislative categories need not be drawn with "mathematical nicety" (Dandridge v. Williams, 397 U.S. 471, 485, 90 S.Ct. 1153, 25 L.Ed.2d 491 (1970), for classification necessarily involves approximation; but legislative classifications which are not only imprecise, but *lack rational relationship* to their avowed purpose, are

> invalid, United States Department of Agriculture v. Moreno, 413 U.S. 528, 538, 93 S.Ct. 2821, 37 L.Ed.2d 782 (1973)
>
> ...In any event, the amount of the double bond required in this case would be *beyond the reach of many litigants*.
>
> ...Thus, for this appellant, no less than for the appellants in Lindsey, "as a practical matter, appeal is *foreclosed*, no matter how meritorious [his] case may be." 405 U.S. at 79, 92 S.Ct. at 877.
> (536 F.2d at 860; emphasis added)

It pointed out that "(a) cost requirement valid on its face may offend the Constitution as applied to a particular case." (536 F.2d at 861) Yet the Wisconsin Supreme Court's *per se* rule leaves no room for appellate courts to sort out which corporations can, and which ones cannot, afford to pay attorneys in given appeals to represent them (e.g. by signing the Notice of Appeal).

A like decision was reached in Merchants Ass'n. v. Conger, 606 P.2d 125 (Mont. 1979) (held statutory appellate

requirement of filing a financial "undertaking" "double" the amount of the judgment, as a prerequisite to processing the appeal, was as *applied* to a natural person who could *not* afford to pay for it, a violation of Equal Protection). Likewise, a small family owned corporation is denied Equal Protection of the Law when the Wisconsin *per se* rule is "applied to" it, as a prerequisite to appeal adverse judgment, if it cannot afford to have an attorney to sign the Notice of Appeal. *See* also *e.g.*, Douglas v. California, 372 U.S. 353, 356-8, 83 S.Ct. 814 (1963) (held "invidious discrimination" in violation of Equal Protection because the "line" in criminal appeal cases "has been drawn between rich and poor" and "...the right to appeal does *not* comport with fair procedure" for the "indigent"; "when society acts to deprive one of its members of his life, liberty *or property*, it takes its most awesome steps; the indigent...has only the right to a *meaningless* ritual [because of lack of finances], while the rich man has a meaningful appeal"; Lane v. Brown, 372 U.S. 477, 480-5, 83 S.Ct. 768 (1963); (held governed by Griffin as violation of Equal Protection because appeal right in effect denied to appellants that "could [not] afford 'to pay for trial transcripts'"); Rinald v. Yeager, Warden, 384 U.S. 305, 308-11, ___

S.Ct. ___ (1966) (held Equal Protection violated since it requires "some rationality in the nature of the class signaled out...some relevance to the purpose for which the classification is made" and the statutory provisions did *not* apply that requirement "with an even hand").

These issues concerning "access" to state appellate court systems are generally governed by state statutes, state judicial rules and/or state common law principles. Historically, there has *generally* been in most states a "black" and "white" distinction between the absolute right of all natural persons to act as his or her own attorneys and the reverse side of that coin, barring all corporations from ever being able to act in any civil lawsuit under any circumstances via any non-attorney--even if that person happens to be via the sole owner, officer and director of a small financially impoverished family owned corporation that has *no money* to pay an attorney to represent the corporation and accordingly, could *not* persuade an attorney to represent it in a civil action. See e.g. Annotation, Propriety and Effect of Corporation's Appearance Pro Se Through Agent Who is Not Attorney, 8 A.L.R. 5th 653.

This case does *not* deal with broad brush constitutional issues or with

claimed absolute constitutional rights of *all* corporations *vis a vis* all aspects of civil court proceedings. This Court would be resolving much narrower issues triggered by the particular facts in this case and the *per se* rule being applied in this context. In the aforesaid Annotation, the Iowa Supreme Court in Hawkeye Bank, the lead case, pointed out that "(w)e recognize that due process requires the court system to be *accessible* to those who are aggrieved." This constitutional right was also recognized by the Supreme Court of Hawaii in Oahu Plumbing:

> "Due Process of law requires only that the court system be *open* to use by those aggrieved..."

But when a corporation is required to have its Notice of Appeal signed by an attorney who it cannot afford to pay, and hence cannot hire to represent it, there is no meaningful "access" to the appellate system and the courts are not really "open" to such a corporation.

II. The Constitutional Questions Presented are Important to all Financially Disadvantaged Corporations in this Country that Ever became Involved in

Civil Litigation and there is a Lack of Consistency of the State and Lower Federal Due Process and Equal Protection Decisions of this Court

Accordingly, there is a need *at this time* to clarify what these constitutional guarantees do and do not mean when applied to financially troubled small corporations in civil actions.

III. It is only Rarely that a Financially Disadvantaged Corporation is able to get these Important Constitutional Issues Before an Appellate Court for Resolution Because, by Definition, There is an Inherent Lack of Available Money. This Case is a Classic Example of what can and does Occur, and it Poses Several Important Constitutional Issues with Razor Sharp Clarity in a Factually Unique Appellate Setting

The genius of our judicial system, including the clarification and establishment of constitutional rights, is in the deciding of concrete cases. This opportunity for this Court to clarify these important constitutional

issues in a civil--rather than criminal--litigation setting may *not* come again for many years!

Conclusion

This is a first class opportunity for this Court to grapple with, and then resolve, constitutional issues which are important to the many common, average, hard working citizens of this country who have their businesses organized as *corporations*, but find at time they do *not* have enough money available to hire one of the seemingly countless attorneys who abound in this country.

Respectfully submitted this 11th day of July, 1997.

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(2)
Supreme Court, U.S.
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No. _____

In the
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1996

Blueprint Engines, Inc., *Petitioner-Defendant*,
v.
Jadair Incorporated, *Plaintiff-Respondent*, and
United States Fire Insurance Company, *Defendant-Respondent*,
Mesirow Insurance Services, Inc., West Bend Air, Inc., Stanley Aircraft & Engine Service, Inc., Employers Reinsurance Corporation, *Defendants*.

On Petition for a Writ of Certiorari to the Supreme Court of the State of Wisconsin

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APPENDIX FOR WRIT OF CERTIORARI

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A

No. 95-1946

STATE OF WISCONSIN IN SUPREME COURT

Jadair Incorporated,
Plaintiff-Appellant-Petitioner,

v.

United States Fire Insurance Company,
Defendant-Respondent,

Mesirow Insurance Services, Inc., West Bend Air, Inc., Stanley Aircraft & Engine Service, Inc., and employers Reinsurance Corporation,
Defendants,

Blueprint Engines, Inc.,
Defendant-Petitioner.

REVIEW of a decision of the Court of Appeals. *Affirmed.*

¶1 JANINE P. GESKE, J. This is a review of a court of appeals decision and order dismissing the appeal of Blueprint

Engines, Incorporated ("Blueprint") for lack of jurisdiction.[1] Blueprint attempted to appeal an order granting summary judgment to United States Fire Insurance Company ("U.S. Fire") by the circuit court for Ozaukee County, Walter J. Swietlik presiding. U.S. Fire moved to dismiss Blueprint's appeal because its notice of appeal was signed by Edward Rachanski ("Mr. Rachanski"), a nonlawyer and Blueprint's president. The court of appeals held that because Mr. Rachanski

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[1] Jadair v. U.S. Fire Ins. Co., No. 95-1946, slip op. at 2 (Wis. Ct. App. Oct. 25, 1995).

was not a lawyer,[2] he could not represent Blueprint and thus the notice of appeal filed on behalf of Blueprint was ineffective to commence an appeal by Blueprint. The court of appeals concluded that because an effective notice of appeal is a prerequisite to jurisdiction, Blueprint's appeal must be dismissed. We agree and affirm the decision of the court of appeals.[3]

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[2] When we use the term "lawyer" in this opinion, we refer to persons qualified to practice law in this state according to the requirements set out in SCR 40.

[3] In the same decision, the court of appeals denied U.S. Fire's motion to dismiss the appeal of Jadair Incorporated. Denial of that motion is not an issue before us.

FACTS AND PROCEDURAL HISTORY

¶2 This lawsuit arose out of a claim for damages to an aircraft engine belonging to Jadair Incorporated ("Jadair"). Jadair alleged that these damages were the result of an engine overhaul performed by Blueprint. Jadair sued, among others, Blueprint and U.S. Fire, an insurance company which had issued a general liability airport policy to Blueprint. Jadair did not name Blueprint's president, Mr. Rachanski, as an individual defendant. U.S. Fire denied coverage for Jadair's damages. Blueprint answered Jadair's complaint and filed a

cross-claim[4] against U.S. Fire, contending that it was entitled to insurance coverage for its potential liability to Jadair.

¶3 On November 14, 1994, U.S. Fire filed a motion for summary judgment and dismissal of Jadair's claims and the co-defendants' cross-claims. On November 17, 1994, Blueprint's Illinois attorney filed a motion to withdraw from representation. The motion to withdraw stated: "Defendant, BLUEPRINT ENGINES, INC. has determined that self-representation would be in its

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[4] Blueprint's claim against U.S. Fire, filed by counsel from Illinois, was erroneously labeled a counter-claim. For purposes of this opinion, we will regard Blueprint's claim against U.S. Fire as a cross-claim. See Wis. Stat. § 802.07 (1),(3).

best interests and has therefore decided to represent itself in the pending action." At a December 8, 1994 motion hearing, Blueprint's attorney stated that Blueprint felt it was in its best interests financially for him to withdraw. Mr. Rachanski then told the court that, at that time, he did not intend to retain other counsel for the corporation. At that hearing, counsel for other parties, including the attorney for Jadair, Ross R. Kinney, and the attorney for U.S. Fire, voiced no objection to the withdrawal of Blueprint's attorney. The circuit court entered an order granting the motion to withdraw on December 12, 1994.

¶4 Subsequently, Blueprint, acting through its president, Mr. Rachanski, continued to receive copies of correspondence and other documents filed with the court. On May 25, 1995, the circuit court granted U.S. Fire's motion for summary judgment and dismissed all of Jadair's claims against U.S. Fire. The court also ordered dismissal of the co-defendants' cross-claims against U.S. Fire. [5]

¶5 The attorney for Jadair, and Mr.

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[5] The cross-claims dismissed were all based on the policy issued by U.S. Fire to Blueprint or on claims of bad faith or alleged tortious interference with a contractual relationship between Jadair and Blueprint.

Rachanski for Blueprint, filed notices of appeal from the order for summary judgment on July 15, 1995, and August 21, 1995, respectively. On September 18, 1995, U.S. Fire moved to dismiss both appeals, contending that Jadair's notice of appeal was filed too early and that Blueprint's notice of appeal was fatally defective because it had not been signed by an attorney. According to Blueprint's brief, the corporation retained Attorney Ross R. Kinney immediately upon receipt of U.S. Fire's motion to dismiss.[6]

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[6] In our consideration of the validity of Blueprint's notice of appeal, we do not determine whether a conflict of interest exists over Attorney Kinney's representation of Blueprint in this

¶6 In an opinion and order dated October 25, 1995, the court of appeals denied the motion to dismiss Jadair's appeal but granted the motion to dismiss Blueprint's appeal. The court of appeals concluded that corporations must appear by counsel. The appellate court reasoned that because Blueprint's notice of appeal was not signed by an attorney, it was fatally defective. The court of appeals stated that an effective notice of appeal is a prerequisite to the court of appeals' jurisdiction. Consequently, the court of

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review, and his role as counsel for Jadair Incorporated, the party suing Blueprint. Jadair has not sought review in this court of any lower court rulings in this action.

appeals ruled that Blueprint's appeal must be dismissed.

STATUTORY AND RULE CONSTRUCTION

¶7 This court granted Blueprint's petition for review to decide whether a notice of appeal is fatally defective when it is signed and filed by a nonlawyer on behalf of a corporation. To analyze this issue we turn to court rules, state statutes and constitutional provisions. The pertinent facts are not in dispute.

¶8 Our rules of civil procedure set out the means by which an appeal is initiated. Rules of statutory interpretation are helpful when we interpret rules of civil procedure

promulgated by this court. See County of Door v. Hayes-Brook, 153 Wis. 2d 1, 21 n.1, 22 n.2, 449 N.W.2d 601 (1990) (Abrahamson, J., concurring). Rule interpretation, as well as statutory interpretation, present questions of law which this court reviews independently of the lower courts. See Stockbridge School Dist. v. Department of Pub. Instruction Sch. Dist. Boundary Appeal Bd., 202 Wis. 2d 214, 219, 550 N.W.2d 96 (1966); Hughes v. Chrysler Motors Corp., 197 Wis. 2d 973, 978, 542 N.W.2d 148 (1966). The goal of rule interpretation is to produce a result not inconsistent with the manifest intent of the supreme court. County of Door, 153

Wis. 2d at 22, n.2 (Abrahamson, J., concurring). The goal of statutory interpretation is to ascertain and give effect to the intent of the legislature. See, e.g., Stockbridge School Dist., 202 Wis. 2d at 219; Hughes, 197 Wis. 2d at 978.

¶9 We first look to the plain language of the rules and statutes themselves. See Jungbluth v. Hometown, Inc., 201 Wis. 2d 320, 327, 548 N.W.2d 519 (1996). If the manifest intent of the court is clear from the plain language of the rules, we need look no further. Similarly, if the intent of the legislature is clear from a statute's

language, a court must give effect to this intent and look no further. See State v. Williams, 198 Wis. 2d 516, 525, 544 N.W.2d 406 (1996). If, however, a statute is capable of being construed in different ways, that construction which works an absurd of unreasonable result should be avoided. Braun v. Wisconsin electric Power Co., 6 Wis. 2 d 262, 268, 94 N.W.2d 593 (1959).

¶10 If we determine that court rules of state statutes require that only lawyers may sign and file notices of appeal on behalf of a corporation, then Blueprint raises an additional challenge. Blueprint asserts that such a requirement

would be unconstitutional. The party challenging a statute must overcome the presumption that the statute is constitutional, and must prove it to be unconstitutional beyond a reasonable doubt. State v. Carpenter, 197 Wis. 2d 252, 263-64, 541 N.W.2d 105 (1955). The application of constitutional provisions to the facts of a case is a question of law that we decide independently. State v. P.G. Miron Const. Co., Inc., 181 Wis. 2d 1045, 1052, 512 N.W.2d 499 (1994).

ARGUMENTS OF THE PARTIES

¶11 Blueprint contends that there is no supreme court rule prohibiting an officer of a corporation from signing and

filing a notice of appeal on behalf of that corporation. Nor, Blueprint asserts, do the statutes expressly prohibit such an act.[7] If, however, we require that a

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[7] **Wis. Stat. § (Rule) 809.10 (initiating appeal).** (1) NOTICE OF APPEAL. (a) *filing.* A person shall initiate an appeal by filing a notice of appeal with the clerk of the trial court in which the judgment or order appealed from was entered and shall specify in the notice of appeal the judgment or order appealed from, whether the appeal is in one of the types of cases specified in s. 752.31 (2), and whether the appeal is one of those to be given preference in the circuit court or court of appeals pursuant to statute. The person at the same time shall notify the court of appeals of the filing of the appeal by sending a copy of the notice of appeal to the clerk of court. The person shall also send the court of appeals an original and one copy of a completed docketing statement on a form prescribed by the court of appeals. The statement shall accompany the court of appeals' copy of the notice of appeal. The person shall

notice of appeal filed on behalf of a corporation be signed by an attorney, Blueprint still maintains that a notice of appeal signed by a nonlawyer does not divest the court of appeals of jurisdiction. Blueprint denies that Mr. Rachanski's action here constitutes the

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also send a copy of the completed docketing statement to opposing counsel. Docketing statements need not be filed in criminal cases or in cases in which a party appears pro se.

(b) *Time for filing.* The notice of appeal must be filed within the time specified by law. The filing of a timely notice of appeal is necessary to give the court jurisdiction over the appeal.

All statutory references are to the 1995-96 volume of the Wisconsin Statutes, unless otherwise indicated.

unauthorized practice of law under Wis. Stat. § 757.30.[8] Furthermore, even if Mr.

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[8] **Wis. Stat. § 757.30 Penalty for practicing without license.**

(1) Every person, who without having first obtain a license to practice law as an attorney of a court of record in this state, as provided by law, practices law within the meaning of sub. (2) , or purports to be licensed to practice law as an attorney within the meaning of sub. (3), shall be fined not less than $50 nor more than $500 or imprisoned not more than one year in the county jail or both, and in addition may be punished as for a contempt.

(2) Every person who appears as agent, representative or attorney, for or on behalf of any other person, or any firm, partnership, association or corporation in any action or proceeding in or before any court of record, court commissioner, or judicial tribunal of the United States, or of any state, or who otherwise, in or out of court, for compensation or pecuniary reward gives professional legal advice not incidental to his or her usual or ordinary

Rachanski's conduct violated Wis. Stat. § 757.30, Blueprint argues that such conduct cannot void the legal effect of the notice if the statutorily prescribed jurisdictional requirements are met.

¶12 According to Blueprint, a result that would invalidate Blueprint's notice of appeal is too harsh, and would violate constitutional guarantees of due process and equal protection under the law. Blueprint also contends that a statutory requirement that only lawyers may sign and

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business, or renders any legal service for any other person, or any firm, partnership, association or corporation, shall be deemed to be practicing law within the meaning of this section.

file a notice of appeal on behalf of a corporation would violate the provision of art. I, sec. 21 of the Wisconsin Constitution permitting "any suitor" to prosecute or defend a suit in his or her own proper person.[9]

¶13 At oral argument, Blueprint's attorney proposed that we consider nonlawyer representation of corporations on a case-by-case basis. Blueprint asserted that such consideration should

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[9] Wis. Const. Art. I, sec. 21 provides:

(2) In any court of this state, any suitor may prosecute or defend his suit either in his own proper person or by an attorney of the suitor's choice.

only be given where a nonlawyer signs and files a notice of appeal. Blueprint agreed that nonlawyers should not be permitted to represent corporations by filing a complaint, or appearing at trail or at any later stage of an appeal including the submission of briefs. The test, according to Blueprint's attorney, should be whether the corporation was reasonable in deciding to have a nonlawyer represent the corporation. To apply this new test, Blueprint suggested that the parties submit affidavits to the court of appeals on the reasonableness question. Alternatively, Blueprint suggested that a special master be appointed to oversee

such post-appeal discovery. That post-appeal discovery, according to Blueprint, would extend to matters such as the size of the corporation, the number of shareholders, the corporation's amount of discretionary income and its financial ability to pay for legal counsel.

¶14 U.S. Fire asks that we affirm the court of appeals' holding that the notice of appeal filed by Mr. Rachanski on behalf of Blueprint was ineffective to commence an appeal by that entity. U.S. Fire contends that a corporation must be represented by a licensed lawyer in a legal proceeding other than in small

claims court. See Wis. Stat. § 799.06.[10] Therefore, U.S. Fire asserts a

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[10] **Wis. Stat. § 799.06 Actions; how commenced, pleadings, appearances**

. . . **(2)** A person may commence and prosecute or defend an action or proceeding under this chapter and may appear in his, her or its own proper person or by an attorney regularly authorized to practice in the courts of this state. Under this subsection, a person is considered to be acting in his, her or its own proper person if the appearance is by a full-time authorized employe of the person. An assignee of any cause of action under this chapter shall not appear by a full-time authorized employe, unless the employe is an attorney regularly authorized to practice in the courts of this state.

In small claims court, the nonlawyer signing the document *is* the party to the action, if he or she is a full-time authorized employee of the corporation. Otherwise, the party can appear in his or her own proper person, or by engaging an attorney to appear on behalf of the party.

corporation's appeal must be dismissed when the notice of appeal is signed by a nonlawyer officer of the corporation. This statutory requirement, according to U.S. Fire, does not violate the constitutional principles of due process and equal protection because a corporation is not a natural person. Similarly, the term "any suitor" in art. I, sec. 21(2) of the Wisconsin Constitution, according to U.S. Fire, refers only to natural persons.

¶15 At oral argument, U.S. Fire conceded that it has suffered no prejudice by the fact that a nonlawyer signed and filed the notice of appeal on behalf of Blueprint. U.S. Fire also conceded that

Blueprint's notice of appeal was timely filed. U.S. Fire simply asserts that a nonlawyer cannot represent a corporation in legal proceedings outside of small claims court. According to U.S. Fire, a number of policies underlie this flat prohibition, including the need to keep separate the corporation's identity from that if its shareholders, and the efficient administration of justice. Further, the practice of law without a license is a criminal matter. Wis. Stat. § 757.30. The case-by-case approach sought by blueprint, therefore, might represent a measure of approval for illegal conduct. This approach, according

to U.S. Fire, is a Pandora's box we should not open.

RULES OF PROCEDURE

¶16 Whether a notice of appeal is fatally defective when it is signed and filed by a nonlawyer on behalf of a corporation is a question of first impression. To answer that question we must engage in a two-step analysis. First, must a notice of appeal, filed on behalf of a corporation, be signed by a lawyer? If we answer yes, we must then consider the effect of a corporation's failure to meet this requirement.

¶17 Under Wis. Stat. § (Rule)

809.84,[11] appeals are governed by the rules of civil procedure unless the appellate rules of the circumstances of the appeal require a different result. A notice of appeal is a "paper" under Wis. Stat. § (Rule) 801.14.[12] Rhyner v. Sauk county,

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[11] **Wis. Stat. § (Rule) 809.84 (Applicability of rules of civil procedure).**

An appeal to the court is governed by the rules of civil procedure as to all matters not covered by these rules unless the circumstances of the appeal or the context of the rules of civil procedure requires a contrary result.

[12] **Wis. Stat. § (Rule) 801.14 Service and pleadings and other papers.** (1) Every order required by its terms to be served, every pleading unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion

118 Wis. 2d 324, 327, 348 N.W.2d 588 (1984). All papers filed in an action must be signed. Wis. Stat. § (Rule) 802.01 (2) (d).[13] See Charles D. Clausen & David P. Lowe, The New Wisconsin Rules

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other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, undertaking, and similar paper shall be served upon each of the parties....

[13] **Wis. Stat. § (Rule) 802.01 Pleadings allowed; form of motions....**

(2)(d) *Formal requirements.* The rules applicable to captions, signing and other matters of form of pleadings apply to all motions and other papers in an action, except that affidavits in support of a motion need not be separately captioned if served and filed with the motion. The name of the party seeking the order or relief and a brief description of the type of order or relief sought shall be included in the caption of every written motion.

of Civil Procedure: Chapters 801 to 803, 59 Marq. L. Rev. 1, 48 (1976). A notice of appeal is a signed paper containing certain required pieces of information. Wis. Stat. § (Rule) 809.10 (1) (a). The notice of appeal must specify the judgment or order appealed from, and the statutory type of appeal being made. Id. The notice of appeal must be filed with the clerk of the circuit court, and a copy sent to the clerk of court for the court of appeals. Id. Thus, the notice of appeal apprises both the circuit court and the appellate court of the proponent's intent to pursue legal recourse based on a prior court judgment or order.

¶18 A notice of appeal timely filed gives the court of appeals jurisdiction over the appeal. Wis. Stat. § (Rule) 809.10(1) (b). Once a notice of appeal is signed and filed with the clerk of court for the circuit court, the clerk begins to prepare the record on appeal. Wis. Stat. § (Rule) 809.15(2). Once a copy of the notice of appeal is filed with the court of appeals, that court begins its process of screening and scheduling the matter for consideration, including oral argument. See Wisconsin Court of Appeals Internal Operating Procedures 413 (Lawyer's Coop. Pub. 1996).

¶19 We agree with Blueprint that our

rules of appellate procedure do not expressly state who may sign a notice of appeal on behalf of a corporation. We now turn our attention to the statutes.

THE UNAUTHORIZED PRACTICE OF LAW STATUTE

¶20 The primary purpose of laws controlling the unauthorized practice of law is to protect the public. Hopper v. City of Madison, 79 Wis. 2d 120, 133-34, 256 N.W.2d 139 (1977). Statutes and rules that control the unauthorized practice of law assure that the public is not harmed by inadequate or unethical representation. Littleton v. Langlois, 37 Wis. 2d 360, 364, 155 N.W.2d 150 (1967).

¶21 Section 757.30(1), Wis. Stat.,

describes the penalty for practicing law without a license. Section 757.30(2), Wis. Stat., describes the practice of law for purposes of this section. The practice of law includes appearing on behalf of some other person or entity in any action or proceeding in or before any court of record, court commissioner, or judicial tribunal of the United States, or of any state. Wis. Stat. § 757.30(2). The practice of law also includes the giving of professional legal advice not incidental to that person's usual or ordinary business, and the rendering of any legal service for any other person or firm, partnership, association or

corporation. Id. Individuals may forego legal representation by an attorney and represent themselves in court proceedings. Wis. Const. Art. I, sec. 21.

¶22 Under the plain language of the rules and statues, we conclude that only lawyers can appear on behalf of, or perform legal service for, corporations in legal proceedings before Wisconsin courts. The intent of the legislature is clear. The only exception the legislature has made to the unauthorized practice of law statute is the exception contained in Wis. Stat. § 799.06(2) for actions filed in small claims court. When the legislature specifically enumerates certain exceptions

to a statute, we will presume that the legislature intended to exclude any other exceptions. Georgina G. v. Terry M., 184 Wis. 2d 492, 512, 516 N.W.2d 678 (1994). Under our authority to define and regulate the practice of law, we will not devise an additional exception.[14] State ex rel.

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[14] A number of other jurisdictions also prohibit corporations from appearing by nonlawyers. In Hawkeye Bank and Trust National Ass'n v. Baugh, 463 N.W.2d 22 (Iowa 1990), the court found the general rule to be that a corporation can appear only by an attorney, while a natural person may appear for him or herself. The rule is based in part on the goal of preserving the corporation as a legal entity separate from its shareholders. Hawkeye, 463 N.W.2d at 24. See also Strong Delivery Ministry Ass'n v. Board of Appeals of Cook County, 543 F.2d 32 (7th Cir. 1976) (finding that the corporation is a legal entity with its own existence, separable from the interest of its

president); Woodford Mfg. Co. v. A.O.O., Inc., 772 P.2d 652 (Colo. Ct. App. 1988), cert. denied, 797 P.2d 748 (Colo. 1990) (goal of preserving corporation as a separate entity); Oahu Plumbing and Sheet Metal, Ltd. v. Kona Construction, Inc., 590 P.2d 570, 573 (Haw. 1979) (because a corporation is an artificial entity, it can only act through its agents). The Hawaii supreme court reasoned that legal proceedings are to be conducted according to the rules of law and practice of courts, and by those charged with the responsibility of legal knowledge and professional duty. Oahu Plumbing, 590 P.2d at 573. Permitting nonlawyer agents to represent corporations in litigation would result in an unintended exception to the rules against the unauthorized practice of law. Id. at 574.

Persons who seek to incorporate obtain certain benefits from the state, including a limitation on personal liability. See, e.g., Wis. Stat. §§ 180.0828, 181.287. The cos tof such benefit includes the requirement that the corporation be represented by a licensed lawyer for court appearances and legal services. See Woodford, 772 P.2d at 654 ("[w]hen a business accepts the advantages

State Bar of Wisconsin v. Bonded Collections, Inc., 36 Wis. 2d 643, 648-49, 154 N.W.2d 250 (1967).

¶23 The notice of appeal is the paper which invokes the appellate court's jurisdiction. A person who signs and files a notice of appeal on behalf of another, is rendering a legal service.[15]

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of incorporation, it must also bear the burdens, including the need to hire counsel to sue or defend in court."); Algonac Mfg. Co. v. United States, 458 F.2d 1373, 1375 (Ct. Cl. 1972) (corporation must appear through licensed attorney, even though the corporation claims to have insufficient funds.)

[15] Other jurisdictions conclude that the filing of a notice of appeal constitutes the practice of law. See, e.g., Conagra, Inc. v. Swanson, 356 N.W.2d 825, 826 n.1 (Minn. Ct. App. 1984) (the practice of law includes filing briefs and

When a nonlawyer engages in such conduct, not on his own behalf but on behalf of a corporation, that person is subject to penalty under Wis. Stat. § 757.30.

¶24 We conclude that the legislature plainly intended that the signing and filing of a notice of appeal on behalf of a corporation is the practice of law.[16]

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notices of appeal); Midwest Home Savings and Loan Ass'n v. Ridgewood Inc., 463 N.E. 2d 909, 912 (Ill. App. Ct. 1984) (where statute made it unlawful for a corporation to practice law or to appear as an attorney in any court, corporation could not file a valid notice of appeal without the advice and services of an attorney).

[16] By concluding that a licensed attorney must sign and file the notice of appeal, we recognize that another individual may physically file the appeal at the direction of the lawyer, after the lawyer has signed the notice. We use the

See Wis. Stat. § 757.30(2). To conclude otherwise would be unreasonable, and would frustrate the purpose of protection of the public. Blueprint essentially asks us to construe the statute to mean that the practice of law includes the filing of a complaint through representation at trial, the filing of appellate briefs and the provision of oral arguments. But Blueprint would have us construe the statute to mean that a jurisdictional step in the middle of that process is not the practice of law. Such a construction is unreasonable. We avoid statutory

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term "sign and file" with this understanding.

construction that works an absurd of unreasonable result. Georgina G. v. Terry M., 184 Wis. 2d at 509.

ASSERTED CONSTITUTIONAL VIOLATIONS

¶25 Blueprint's next contention is that this statutory prohibition against nonlawyers signing and filing a notice of appeal on behalf of a corporation is unconstitutional. We disagree. Blueprint's first constitutional argument is that the "any suitor" provision of art. I, sec. 21(2) of the Wisconsin Constitution entitles a corporation to represent itself. Our courts have already rejected this view. See S.Y. v. Eau Claire County, 162 Wis. 2d 320, 329, 469 N.W.2d 836

(1991). There we said that the phrase "in proper person" contained within art. I, sec. 21(2) merely means that an individual may prosecute or defend by personally representing himself or herself and no one else. In S.Y. we said nothing about the ability of a corporation to represent itself through a nonlawyer.

¶26 The court of appeals has flatly stated that under art. I, sec. 21(2), "every natural person in Wisconsin has an absolute right to appear pro se." Hlavinka v. Blunt, Ellis & Loewi, Inc., 174 Wis. 2d 381, 394, 497 N.W.2d 756 (1993). Blueprint's asserted construction of the term "any suitor" does not establish the

right of a corporation to be represented by a nonlawyer before a court of law. A corporation is not a "natural person," and therefore, Blueprint cannot fall within the term "any suitor" for purposes of corporate self-representation.

¶27 Blueprint also claims that a statute prohibiting corporations from self-representation would violate the constitutional rights to obtain justice freely,[17] to equal protection under the

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[17] Wis. Const. Art. I **Remedy for wrongs.** Section 9. Every person is entitled to a certain remedy in the laws for all injuries, or wrongs which he may receive in his person, property, or character; he ought to obtain justice freely, and without being obliged to purchase it, completely and without denial, promptly and without denial,

law, and to due process.[18] We disagree. Thirty years ago we faced similar assertions by a nonlawyer executor in probate proceedings. The executor had submitted matters to the county court for adjudication, and we agreed with the court that the executor's conduct was not an appearance merely on his own behalf, but was also a representation of others. State ex rel. Baker v. County Court of

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promptly and without delay, conformably to the laws.

[18] Section 1 of the Fourteenth Amendment, U.S. const., provides in part:

. . . nor shall any State deprive any person of life, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Rock County, 29 Wis. 2d 1, 18-19, 138 N.W.2d 162 (1965). The county court judge refused presentation of certain papers by the executor because under the circumstances, that presentation constituted the unauthorized practice of law. 29 Wis. 2d at 10-11. We affirmed the lower court's ruling because we viewed the prohibition against the unauthorized practice of law as a reasonable regulation in the public interest of orderly judicial administration. Id. at 11. This reasoning also applied to the executor's claim that requiring representation by a lawyer violated the Equal Protection Clause.

¶28 In Baker, we also rejected the executor's claims that he was denied the right to obtain justice freely. The executor argued that he should not be forced to pay for counsel. We said that art. I, sec. 9 of the Wisconsin Constitution does not guarantee that a litigant will incur no expense, rather it prohibits bribes or arbitrary payments to officials in order to obtain justice. 29 Wis. 2d at 12.

¶29 Contrary to Blueprint's assertions, it is not a violation of a corporation's due process rights when a court refuses to allow the corporation to be represented by a person not licensed to

practice law in Wisconsin. See State v. Olexa, 136 Wis. 2d 475, 402 N.W.2d 733 (Ct. App. 1987) (due process rights not violated because only a member of the Wisconsin bar or someone accompanied by a member of the bar may appear on behalf of another in Wisconsin courts). Blueprint's constitutional arguments are without merit. Thus, we answer the first question in our two-step analysis "Yes." A notice of appeal filed on behalf of a corporation must be signed by a lawyer. The notice of appeal is defective if it is signed by a nonlawyer on behalf of a corporation. To hold otherwise would condone the unauthorized practice of law, in

contravention of our statutes.

NATURE OF THE DEFECT

¶30 We now turn to the consequences of a defective notice of appeal. We considered whether a defect in a summons was fundamental or technical in Gaddis v. LaCrosse Products, Inc., 198 Wis. 2d 396, 542 N.W.2d 454 (1996). There we analyzed the requirements of Wis. Stat. §§ (Rules) 801.09(3) and 802.05 to determine whether the plaintiff's failure to sign a summons was a technical defect. 198 Wis. 2d 399-400. In a more recent case, Burnett v. Hill, _____ Wis. 2d ___, 557 N.W.2d 800 (1997), we analyzed the requirements of Wis. Stat. §§ (Rules) 801.02 and 801.11 to

determine whether the plaintiff's service of a publication summons was only technically defective. In Burnett the plaintiff had mailed the defendant an unauthenticated copy of a publication summons along with authenticated copies of the original summons and complaint. 557 N.W.2d at 802.

¶31 In each of those cases, we considered whether the defective service of a pleading was a fundamental defect that nullified the pleading, or whether the defect in service was merely technical. To answer that question we analyzed the purposes of the rule and the type of action involved. If the purpose

of the rule was fulfilled, the defect was not fundamental but technical. If the defect was only technical, we then considered the impact of the defect -- did it result in prejudice to the opposing party?

¶32 In both of those cases, we found that the plaintiffs had filed to comply with the relevant service requirements, but we concluded that the defects were not fundamental. Further, we ultimately determined that the opposing parties were not prejudiced by such defects.[19]

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[19] The defendant in Gaddis v. LaCrosse Products, Inc., 198 Wis. 2d 396, 542 N.W.2d 454 (1996) conceded the lack of prejudice.

¶33 In a case preceding Gaddis and Burnett, we considered an insurance company's service of an unauthenticated photocopy of an authenticated summons and unauthenticated complaint on a co-defendant. American Family Mut. Ins. Co. v. Royal Ins. Co. Of America, 167 Wis. 2d 524, 481 N.W.2d 629 (1992). There we concluded that the insurance company had failed to meet its burden under Wis. Stat. § (Rule) 801,02(1) for service of process, and that such a failure was a fundamental defect. The defect in service deprived the circuit court of personal jurisdiction over the defendants. 167 Wis. 2d at 535. In that instance, the existence of

prejudice was irrelevant. 167 Wis. 2d at 533.

¶34 Although U.S. Fire and Jadair did not invoke the Gaddis/Burnett analysis in their briefs, we find it an applicable framework under which to analyze the defective notice of appeal here. At oral argument, counsel for U.S. Fire argued that, under the Gaddis/Burnett analysis, when a nonlawyer signs and files a notice of appeal on behalf of a corporation, the notice of appeal is fundamentally defective and voids the appeal. The attorney for Blueprint denied that Wis. Stat. § (Rule) 809.10 requires an attorney's signature, and thus Blueprint

contends that the Gaddis/Burnett analysis does not apply. Alternatively, Blueprint's request for a case-by-case approach parallels the Gaddis/Burnett consideration of whether a technical defect results in prejudice to the opposing party.[20]

¶35 We consider the purposes of both

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[20] Blueprint argues that Drugsvold v. Small Claims Court of Dane County, 13 Wis. 2d 228, 108 N.W.2d 648 (1961) and Littleton v. Langlois, 37 Wis. 2d 360, 155 N.W.2d 150 (1967) are controlling on the question of whether a defective notice of appeal renders the appeal void. We disagree. Both Drugsvold and Littleton involve small claims court appearances and not the filing of a jurisdictional document. Small claims court appearances, as mentioned below, fall within an exception to the unauthorized practice of law statute.

Wis. Stat. § (Rule) 809.10 and Wis. Stat. § 737.50. The purpose of the Wis. Stat. § (Rule) 809.10 requirement for a notice of appeal is to give notice to the respondent of the order or judgment being appealed. The purpose of a timely notice of appeal is also to confer jurisdiction on the court of appeals. Whether or not the court of appeals has jurisdiction of Blueprint's appeal is the ultimate question we must answer on this review. U.S. Fire does not contend that the notice of appeal filed by Mr. Rachanski on behalf of Blueprint failed to provide notice of the appeal. The notice of appeal was also filed in a timely fashion. Thus, the

notice purpose of Wis. Stat. § (Rule) 809.10 is met. But our analysis of the defect does not stop there.

¶36 The primary purpose of the unauthorized practice of law statutes is, as we have already noted, to protect the public. See also, SCR 20:5.5 Unauthorized practice of law, Comment.[21] Our rules of procedure are also designed, in part, to protect the public. For example, Wis.

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[21] **SCR 20:5.5 Unauthorized practice of law** COMMENT

The definition of the practice of law is established by law and varies from one jurisdiction to another. Whatever the definition, limiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons. . . .

Stat. (Rule) § 802.05[22] places a

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[22] **Wis. Stat. § (Rule) 802.05 signing of pleadings, motions and other papers; sanctions.**

(1) (a) Every pleading, motion or other paper of a party represented by an attorney . . . shall be subscribed with the handwritten signature of at least one attorney of record in the individual's name. A party who is not represented by an attorney shall subscribe the pleading, motion or other paper with the party's handwritten signature and state his or her address. . . . The signature of an attorney or party constitutes a certificate that the attorney or party has read the pleading, motion or other paper; that to the best of the attorney's or party's knowledge, information and belief, formed after reasonable inquiry, the pleading, motion or other paper is well-grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law; and that the pleading, motion or other paper is not used for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

professional obligation on the attorney, as an officer of the court, to satisfy himself or herself as to the legal grounds for the action, defense or motion. McMillan-Warner Mut. Ins. Co. v. Kauffman, 159 Wis. 2d 588, 593, 465 N.W.2d 201 (Ct. App. 1990) (citing Clausen, 59 Marq. L. Rev. at 48).

¶37 In contrast, when a nonlawyer signs and files a notice of appeal on behalf of a corporation, the assurances required by Wis. Stat. § (Rule) 802.05, that the appeal is well-grounded in fact and is warranted by existing law or a good faith argument for the extension,

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(Emphasis added).

modification or reversal of existing law, are not present. The nonlawyer is not bound by the rules of professional responsibility. SCR 10:01, 10:02, nor is the nonlawyer speaking on his or her own behalf. Rather, the nonlaywer is making representations for the corporation.

¶38 In this case, a nonlawyer signed and filed the notice of appeal on behalf of the corporation, Blueprint. The purpose of protecting the public, including any other shareholders of the corporation, was not met. In other cases, Wisconsin courts have concluded that when a notice of appeal is flawed, the court of appeals lacks jurisdiction to hear the

appeal. See, e.g., Weina v. Atlantic Mut. Ins. Co., 177 Wis. 2d 341, 347, 501 N.W.2d 465 (Ct. App. 1993) (court refused to allow petitioners to be granted intervenor status in appeal, where jurisdictional time limit for the commencement of an appeal would be circumvented); Dobberfuhl v. Madison White Trucks, Inc., 118 Wis. 2d 404, 347 N.W.2d 904 (Ct. App. 1984) (absent a timely filing of the notice of appeal, the appeal must be dismissed). An effective notice of appeal is jurisdictional and an appellate court will not permit amendment of a fundamentally defective notice of appeal to save jurisdiction. See, e.g., Ford Motor

Credit Co. v. Mills, 142 Wis. 2d 215, 418 N.W.2d 14 (Ct. App. 1987) (defect of failure to file notice of appeal could not be corrected by amending notice to substitute appellant's attorney as appellant).

¶39 It is true that the failure to comply with a requirement of the rules of appellate procedure, other than the timely filing of a notice of appeal or cross-appeal, will not affect the jurisdiction of the court over the appeal.[23] But here

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[23] Such failure, however, is grounds for measures including dismissal of the appeal, summary reversal, or striking of a paper. See Wis. Stat. § (Rule) 809.83 (2) below.

Wis. Stat. § (Rule) 809.83 (Penalties

we face a failure to comply with the statute prohibiting the unauthorized practice of law. The requirement that only attorneys licensed to practice law in this state may sign and file a notice of appeal on behalf of a corporation is more than a technical requirement. It is a fundamental requirement imposed by the legislature. Abandoning that requirement

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for delay or noncompliance with rules).

. . . **(2)** NONCOMPLIANCE WITH RULES. Failure of a person to comply with a requirement of these rules, other than the timely filing of a notice of appeal or cross-appeal, does not affect the jurisdiction of the court over the appeal but is grounds for dismissal of the appeal, summary reversal, striking of a paper, imposition of a penalty or costs on a party or counsel, or other action as the court considers appropriate.

in this case would diminish the protection that the legislature has afforded the public. Abandoning that requirement would also mean that any lay person, on behalf of someone else, could invoke the jurisdiction of the court of appeals. That cannot be the law in this state. In this case, failure to comply with the unauthorized practice of law statute voids the appeal.

¶40 U.S. Fire has conceded a lack of prejudice. Under the Gaddis/Burnett analysis, however, once we determine that a defect is fundamental, we need not consider prejudice. Gaddis, 198 Wis. 2d at 402.

¶41 Contrary to Blueprint's argument, we are not being "too harsh" when we concurrently apply the statutes governing the unauthorized practice of law and the proper filing of a notice of appeal. Only a lawyer can sign and file a notice of appeal on behalf of a corporation. When a nonlawyer represents a corporation in this manner, the notice of appeal is fundamentally defective, and the court of appeals is without jurisdiction. For the foregoing reasons, we affirm the court of appeals decision granting U.S. Fire's motion to dismiss Blueprint's appeal.

By the Court.-The decision of the

court of appeals is affirmed.

B

DISTRICT II

Office of the Clerk

COURT OF APPEALS

OF WISCONSIN

Marilyn L. Graves **October 25, 1995**
Clerk

To:

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Foley & Lardner
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Milwaukee, WI 53202

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Hon. Walter J. Swietlik
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Pt. Washington, WI 53074

Trial Court Clerk
Ozaukee Co. Courthouse
P.O. Box 994
Pt. Washington, WI 53074

You are hereby notified that the Court entered the following opinion and order:

95-1946 Jadair Incorporated v. United State Fire Insurance Company, et al. (L.C. #94-CV-052)

Before Anderson, P.J., Brown and Snyder, JJ.

United States Fire Insurance Company moves the court to dismiss the appeal of Jadair Incorporated because this court lacks jurisdiction over the appeal. United States Fire also moves the court to

dismiss the appeal of Blueprint Engines, Inc., because the notice of appeal for Blueprint was not filed by an attorney. For the reasons set forth below, we deny the motion to dismiss Jadair's appeal and grant the motion to dismiss Blueprint's appeal.

Jadair's notice of appeal was filed in the circuit court on July 17, 1995, and refers to an order for partial judgment dated June 13, 1995. On July 18, a partial judgment was entered. It is clear that the June 13 document was not a final document because it contemplated the entry of partial judgment dismissing all of Jadair's claims against United States

Fire.[1] Accordingly, the appealable document in Jadair's appeal was the July 18 judgment. Jadair's notice of appeal was filed July 17.

Section 808.04(8), Stats., States:

> If the record discloses that the judgment or order appealed from was entered after the notice of appeal was filed, the notice of appeal shall be treated as filed after such entry and on the day thereof.

Here, the notice of appeal is treated as if it had been filed on July 18, the day the appealable document was entered.

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[1]Finality is determined by referring to the language of the June 13 order to discern whether the court intended that the order would be the last document in the litigation or whether it contemplated a document subsequent to that order. *See Radoff v. Red Owl Stores*, 109 Wis.2d 490, 493-94, 326 N.W.2d 240, 241-42 (1982).

Therefore, this court has jurisdiction over Jadair's appeal. United States Fire's motion to dismiss is denied.

We reach this conclusion after considering United States Fire's argument that § 808.04(8), STATS., does not save Jadair's appeal because the July 18 judgment was not rendered prior to the filing of Jadair's notice of appeal on July 17. Section 806.06(1) (a), STATS., states that "[a] judgment is rendered by the court when it is signed by the judge or by the clerk at the judge's written direction." A judgment is entered under § 806.06(1) (b) "when it is filed in the office of the clerk of court."

While there is a difference between

entering and rendering a judgment, § 808.04(8), STATS., does not draw such distinction. Furthermore, accepting United States Fire's interpretation of § 808.04(8) would defeat the purpose of this rule. The rule "is intended to avoid the delay, confusion and prejudice which can result from dismissing appeals solely because they are filed before the judgment or order appealed from is entered." Judicial council Committee's Note, 1992, § 808.04, STATS.

United States Fire moves to dismiss Blueprint's appeal because the notice of appeal was filed by Ed Rachanski, its president. For purposes of opposing the motion to dismiss, Blueprint has retained

counsel. Counsel for Blueprint concedes that Rachanski is not an attorney. However, counsel argues that dismissing Blueprint's appeal would be unjust, particularly since Blueprint has now retained counsel.

Corporations are required to appear by counsel. *See* §§ 757.30(1) and (2), STATS. The appearance of a layperson on behalf of a corporation before a court constitutes the unauthorized practice of law. *See id.; see also Disciplinary Proceedings against Eisenberg,* 96 Wis.2d 342, 346, 291 N.W.2d 565, 567 (1980) (appearance by a layperson on behalf of a corporation before an administrative agency in a contested matter involving the

rights of the corporation constitutes the practice of law). "No individual other than an enrolled active member of the state bar may practice law in this state or in any manner purport to be authorized or qualified to practice law." SCR 10.03(4) (Lawyers Coop 1994).

Because he is not an attorney, Rachanski may not seek to vindicate Blueprint's rights, and the notice of appeal filed by him on behalf of Blueprint is ineffective to commence an appeal by that entity. An effective notice of appeal is a prerequisite to this court's jurisdiction. *See* RULE 809.10(1) (b), STATS.

Blueprint argues that after its

counsel withdrew from trial court proceedings, Rachanski "represented" Blueprint in that court without any objection from United States Fire. Blueprint now argues that United States Fire should be estopped from arguing that Rachanski cannot represent Blueprint on appeal. Regardless of the activity in the trail court and the position taken by the parties in that court on the question of whether Blueprint could appear by Rachanski, this court requires an effective notice of appeal for purposes of acquiring jurisdiction. This court has found no Wisconsin cases permitting a corporation to appear by other than a licensed attorney.

Finally, the fact that Blueprint and Jadair will now use the same counsel on appeal does not alter the fact that Blueprint does not have an appeal pending in this court because its notice of appeal was defective.

Because Blueprint has hot filed an effective notice of appeal and because the time for filing a notice of appeal has expired,[2] Blueprint's appeal must be dismissed.

Upon the foregoing reasons,

IT IS ORDERED that United State

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[2]Notice of entry of the July 18 (partial) judgment was given on July 24. Therefore, a proper notice of appeal had to be filed within forty-five days of the July 18 judgment. *See* § 808.04(1), STATS.

Fire's motion to dismiss Jadair Incorporated's appeal is denied.

IT IS FURTHER ORDERED that the appeal of Blueprint Engines, Inc., is dismissed for lack of jurisdiction.

IT IS FURTHER ORDERED that Jadair Incorporated's appellant's brief shall be filed within thirty days of the date of this order. *See* RULE 809.14(3), STATS.

Marilyn L. Graves
Clerk of Court of Appeals

C

STATE OF WISCONSIN	CIRCUIT COURT BRANCH 1	OZAUKEE COUNTY

JADAIR INCORPORATED,

Plaintiff,

v.

Case No. 94-CV-052 B1

UNITED STATES FIRE INSURANCE COMPANY, MESIROW INSURANCE SERVICES, INC., BLUEPRINT ENGINES, INC., WEST BEND AIR, INC., STANLEY AIRCRAFT & ENGINE SERVICE, INC., and EMPLOYERS REINSURANCE CORPORATION,

30701-Declaratory Judgment
30100-Product Liability
30303 Other Contracts

Defendants.

NOTICE OF APPEAL

TO: Joan M. Zirbes
Clerk of Court
Ozaukee County Courthouse
1201 South Spring Street
Port Washington, WI 53074-0994

Defendant Blueprint Engines, Inc.

hereby appeals to the Court of Appeals II, as a matter of right pursuant to § 808.03(1), Wis. Stats., the final partial judgment entered by the Circuit Court for Ozaukee County in this case pursuant to the Order for Partial Judgment dated June 13, 1995, a copy of which is attached hereto. This appeal is *not* one of the types of cases specificed in § 752.31(2), Wis. Stats. This appeal is, however, one of those to be given preference (i.e. advanced on calendar) pursuant to § 809.20, Wis. Stats.

Dated this 21 day of August, 1995.

BLUEPRINT ENGINES, INC.

by:

Ed Rachanski, President *pro se*